

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

PERCY MATTHEWS II,

Plaintiff and Appellant,

v.

YMCA OF GLENDALE,

Defendant and Respondent.

B204960

(Los Angeles County  
Super. Ct. No. EC043997)

APPEAL from a judgment and orders of the Superior Court of Los Angeles County. Laura A. Matz, Judge. Affirmed.

Percy Matthews II, in pro. per., for Plaintiff and Appellant.

Law Offices of Jeffrey A. Kopczynski and Jeffrey A. Kopczynski for Defendant and Respondent.

\_\_\_\_\_

Plaintiff Percy Matthews II, an African-American, was evicted from his apartment in an unlawful detainer action brought by his landlord, defendant YMCA of Glendale (YMCA). Matthews filed this action against YMCA, alleging racial discrimination and retaliation in violation of the Unruh Civil Rights Act (Civ. Code, §§ 51, 52). After a trial to the court, judgment was entered in favor of YMCA. Matthews challenges the sufficiency of the evidence supporting the judgment and also seeks review of an order awarding YMCA \$800 in discovery sanctions and an order denying Matthews sanctions against YMCA. We affirm because sufficient evidence supports the judgment and Matthews fails to show that the trial court's sanction orders were erroneous or an abuse of discretion.

## **BACKGROUND**

### **A. Pretrial Proceedings**

Matthews's third amended complaint contained 16 causes of action. According to Matthews's appellate briefs, only the 16th cause of action is at issue on this appeal. Matthews alleged that he was seeking damages for "Discrimination of Unequal Treatment by race in violation of the Unruh Civil Rights Act," because in January 2007, YMCA "gave plaintiff an eviction for being behind one month in rent and [allowing] tenants of [C]aucasian race to go beyond one month before giv[ing] an eviction notice."

With a trial date set for December 17, 2007, the parties appeared for a final status conference on December 11, 2007. YMCA brought its trial documents to the conference and admitted that it had failed to lodge them five days before the final status conference. (See Super. Ct. L.A. County, Local Rules, rule 7.9(h) (Local rule 7.9(h)).)<sup>1</sup> Matthews

---

<sup>1</sup> Local rule 7.9(h) provides in pertinent part: "At least 5 days prior to this conference, counsel must have exchanged and filed lists of pre-marked exhibits (See Rules 8.61-8.63) to be used at trial, jury instruction requests, trial witness lists, and a proposed short statement of the case to be read to the jury panel explaining the case. Failure to exchange and file these items may result in not being able to call witnesses, present exhibits at trial, or have a jury trial."

asked the court if he could request sanctions.<sup>2</sup> The court responded, “You can but it will be denied ’cause it’s for my benefit not yours. And I’m not looking for a sanction. I’m looking for the documents.”

On November 30 and December 3, 2007, Matthews filed four motions to compel discovery and a motion to continue the trial. YMCA opposed the motions, seeking sanctions with respect to two of the motions. After hearings on December 14, 2007, the court denied the discovery motions on the grounds that the motions were untimely and were not accompanied by meet and confer declarations and separate statements, “making it impossible for the court to make any determination on the merits of plaintiff’s requests for further responses.” The court also awarded YMCA a total of \$800 in sanctions for two of the motions pursuant to Code of Civil Procedure sections 2031.310, subdivision (d), 2023.010, subdivision (i) and 2023.020.<sup>3</sup>

---

<sup>2</sup> Superior Court of Los Angeles County, Local Rules, rule 7.13 (Local rule 7.13) provides: “The court may impose appropriate sanctions for the failure or refusal (1) to comply with the Rules, (2) to comply with any order made hereunder or (3) to meet the time standards and/or deadlines established herein. . . . Such sanctions may be imposed on a party and/or, if appropriate, on counsel for such party. While the court may impose sanctions for specified conduct, the court should do so sparingly and only when clearly warranted.”

<sup>3</sup> Unspecified statutory references are to the Code of Civil Procedure. Section 2031.310, subdivision (d) provides in pertinent part that the court “shall impose a monetary sanction . . . against any party . . . who unsuccessfully makes or opposes a motion to compel further responses to an inspection demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.”

Section 2023.010 provides in pertinent part: “Misuses of the discovery process include, but are not limited to, the following: [¶] . . . [¶] (i) Failing to confer in person, by telephone, or by letter with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery, if the section governing a particular discovery motion requires the filing of a declaration stating facts showing that an attempt at informal resolution has been made.”

*(footnote continued on next page)*

## **B. Trial Testimony**

Matthews was a tenant of the YMCA. In 2003 he was late in paying his rent because a bus strike made it difficult to reach his employment. Pursuant to the written lease, YMCA assessed Matthews \$25 each month his rent was 15 days late, for a total of \$200. Matthews filed a complaint with the Department of Fair Employment and Housing, alleging racial discrimination in connection with the assessment of the late fees and with YMCA's response to his complaints of physical problems with the premises. In June 2005, the matter was mediated. At the mediation, Matthews testified that he had an oral agreement with Craig Cerro, YMCA's Director of Human Resources, that the late fees would be waived and that Matthews would be allowed to be one month behind in his rent. As a result of the mediation, YMCA credited Matthews with \$200 in late fees that Matthews had paid from 2003 to June 2005. The Department of Fair Employment and Housing closed Matthews's case in early 2006 after their investigation revealed no evidence to support Matthews's claims.

In 2006, Matthews again became late in paying his rent; late fees were assessed and Matthews paid them. In November 2006, YMCA sent a letter to all tenants increasing the rent by \$125 beginning on January 1, 2007. Matthews did not pay his rent due on December 1, 2006, or on January 1, 2007. On January 19, 2007, Cerro caused to be sent to Matthews a three-day notice to pay or quit. Matthews did not contact Cerro or pay any rent in response to the three-day notice, so Cerro caused an unlawful detainer action to be filed against Matthews in February 2007. YMCA obtained a favorable judgment in the unlawful detainer action in March 2007 and YMCA obtained possession of Matthews's apartment in April 2007.

---

*(footnote continued from previous page)*

Section 2023.020 provides: "Notwithstanding the outcome of the particular discovery motion, the court shall impose a monetary sanction ordering that any party or attorney who fails to confer as required pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct."

Meanwhile, in December 2006, Matthews filed the instant action against YMCA. Matthews testified at trial that tenants who were people of color were treated differently than Caucasian tenants in that YMCA gave him a three-day notice after failing to pay the rent for one month while Caucasian tenants were given a three-day notice only after failing to pay rent for four months. Matthews also claimed that he was issued the eviction notice because he had made some complaints about an electrical problem in his unit. But Matthews admitted that sometime around June 2005, the electrical problem was fixed.

Another YMCA tenant, Lesley Almeda, testified for Matthews. Almeda maintained that YMCA's building manager, John Martin, made racist remarks about Matthews in 2005, but she admitted that it was Cerro who made the decisions regarding sending out the three-day notices and filing unlawful detainer actions. Almeda also admitted that Cerro never expressed any negative feelings toward Matthews or African-Americans. According to Almeda, she received an eviction notice in January 2007 when YMCA claimed that she was four months behind in her rent. Almeda believed that she indeed had paid the rent but that it did not get credited to her account. YMCA gave Almeda an opportunity to find receipts to show her payments, but she was unable to find her receipts. Almeda paid the rent claimed to be due.

According to Cerro, in the 10 years in which he worked in human resources for YMCA, he had not received any complaints that employees of YMCA exhibited discriminatory behavior or made discriminatory remarks. Cerro also prepared a history of tenants' rent delinquencies from January to September 2007. Of the 13 delinquencies involving 7 tenants (some of whom were served with more than one notice in 2007), 5 tenants were delinquent one month when the notice to pay rent or quit was served. Matthews and one other tenant were delinquent two months; Almeda was delinquent on one occasion for four months before the notice was served.

It is unclear from our record whether Matthews's exhibit F-1, an affidavit of Greg Bollinger, was received in evidence.<sup>4</sup> At the beginning of trial, Matthews told the court that he had two witnesses but "only one [Almeda] is here." Matthews asked to submit Bollinger's affidavit at trial because Matthews was not able to subpoena him. The court stated, "I can't do that. The other side is entitled to cross-examine. And if the witness isn't here to be cross-examined, it doesn't work." Matthews asked whether the affidavit would be taken into consideration. The court responded, "No. The other side gets to ask questions. And if the witness isn't here for that, then I can't consider the testimony on direct without knowing what would have come out on cross-examination."

After Matthews stated he had no more witnesses for his case-in-chief, the court asked whether YMCA had any objection to the receipt of Matthews's exhibits. YMCA's counsel stated, "No, your Honor, as long as none of them are an affidavit of Mr. Bollinger. I don't believe they are." The court answered, "Okay. The exhibits then are received." The reporter's transcript shows that the court received into evidence Matthews's exhibits A through H-2.

---

<sup>4</sup> Bollinger's affidavit, executed on September 10, 2007, stated: "I agree that during my term as Manager of Glendale YMCA . . . , Percy Matthews has not become behind or delinquent in rent no further than one month. [¶] I agree that when Percy Matthews first became delinquent November/December 2003 and informed me of the uncontrollable situation being the bus strike I informed him to speak with Craig Cerros [*sic*] in regards to immunity from eviction until his situation improved. [¶] I agree that other tenants have been granted such immunities and that some have fallen as far as three to four months behind in rent without receiving an eviction notice."

Given the trial court's ruling that Bollinger's affidavit was inadmissible hearsay and YMCA's making it clear that it was not waiving its objection to the affidavit, if the affidavit was received into evidence, it was through inadvertence and was properly not considered by the trial court. (See, e.g., *People v. Morelos* (2008) 168 Cal.App.4th 758, 768 [where record reveals potential inconsistency, unambiguous pronouncement of court prevails].)

No party requested a statement of decision. On December 19, 2007, a judgment was entered in favor of YMCA. On December 31, 2007, Matthews appealed from the judgment and the sanctions orders.

## **DISCUSSION**

### **A. Judgment**

“Where no statement of decision is requested by the parties, we assume the trial court made whatever findings were necessary to support the judgment. [Citation.] We must indulge all presumptions in favor of the judgment.” (*Horning v. Shilberg* (2005) 130 Cal.App.4th 197, 202.) The lack of a statement of decision “requires us to review the record to determine whether there is substantial evidence to support the trial court's implied factual findings.” (*Border Business Park, Inc. v. City of San Diego* (2006) 142 Cal.App.4th 1538, 1548, fn. 8.)

Substantial evidence supports the implied finding of the trial court that Matthews failed to establish that YMCA discriminated or retaliated against Matthews because of his race in serving him with the January 2007 notice to pay rent or quit and in bringing the unlawful detainer action. The evidence was undisputed that Matthews was delinquent in his rent and failed to pay the rent due. From January to September 2007, other tenants also were delinquent in payment of rent for one or two months and were served with notices to pay rent or quit, but all of the others paid the rent and avoided an unlawful detainer action. The trial court reasonably could have inferred that YMCA acted properly and in good faith in evicting Matthews and that YMCA did not act in a racially discriminatory manner.

With respect to Almeda's testimony, Matthews states in his opening brief that YMCA “has not produced any evidence or conflicting proof other than testimony of Craig Cerros [*sic*] that no discrimination occurred in 2007.” But the testimony of Craig Cerro, whether or not contradicted, is sufficient to support the implied finding that no discrimination or retaliation occurred. According to Cerro, tenants other than Matthews who were one month delinquent were served with a notice to pay rent or quit. And the trial court reasonably could have concluded that Almeda's testimony failed to show

discrimination because she and Matthews were not similarly situated: Almeda admitted that she eventually paid the rent claimed by YMCA to be delinquent.

Matthews's briefs refer to evidence of partial payments of rent by other tenants *before January 2006*; he also alleges that YMCA manipulated its computer records of past rent receipts to cover up discriminatory practices. But the trial court reasonably could have found that the foregoing records were too remote in time and provided too tenuous and speculative a basis from which to draw an inference of discrimination against Matthews in January 2007. Matthews fails to convince us that the evidence is insufficient to support the judgment in favor of YMCA.

#### **B. Sanctions Orders**

According to the language of Local rule 7.13, an award of sanctions for violating the time deadlines in Local rule 7.9 for pretrial filing of exhibit lists is discretionary with the trial court. Matthews fails to cite pertinent authority to support his contention that the trial court abused its discretion in denying him sanctions for YMCA's violation of the time deadline of Local rule 7.9(h).

Matthews also fails to cite authority to support his argument that the court erred in sanctioning him \$800. Substantial evidence shows that Matthews failed to confer with YMCA before filing his discovery motions and that he did not act with substantial justification in bringing the motions. (See fn. 3, *ante*.) Accordingly, Matthews fails to establish error or abuse of discretion with respect to the two sanctions orders.



## **DISPOSITION**

The judgment and the orders of December 11 and December 14, 2007, are affirmed. Defendant is entitled to costs on appeal.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

BAUER, J.\*

---

\* Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.